



OFFICE of the ATTORNEY GENERAL
GREG ABBOTT

June 3, 2003

Ms. Fancy H. Jezek
Holbrook & Jezek
P.O. Box 2548
Harker Heights, Texas 76548-2548

OR2003-3776

Dear Ms. Jezek:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 182082.

The Killeen Independent School District ("KISD"), which you represent, received a request for special education records for "all [Texas Youth Commission] residents receiving services for [KISD]." You claim that the requested information is excepted from disclosure under sections 552.101 and 552.114 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.¹

You contend that the submitted information is protected from disclosure under section 552.101 in conjunction with the Family Educational Rights and Privacy Act ("FERPA") and section 552.114 of the Government Code. Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." FERPA provides that no federal funds will be made available under any applicable program to an educational agency or institution that releases personally identifiable information (other than directory information) contained in a student's education records to anyone but certain enumerated federal, state, and local officials and institutions, unless otherwise authorized by the student's parent. *See* 20 U.S.C. § 1232g(b)(1). "Education records" means those records that contain information directly related to a student and are maintained by an educational agency or institution or by a person acting for such agency or institution. § 1232g(a)(4)(A). Section 552.026 provides as follows: "This chapter does not require the release of

¹ We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

information contained in education records of an educational agency or institution, except in conformity with the [FERPA]." Section 552.114 excepts from disclosure student records at an educational institution funded completely or in part by state revenue. This office therefore, generally applies the same analysis under section 552.114 and FERPA. *See* Open Records Decision No. 634 at 5 (1995).

In Open Records Decision No. 634 (1995), this office concluded that (1) an educational agency or institution must withhold from public disclosure information that is protected by FERPA and excepted from required public disclosure by sections 552.026 and 552.101 without the necessity of requesting an attorney general decision as to those exceptions, and (2) an educational agency or institution that is state-funded must withhold from public disclosure information that is excepted from required public disclosure by section 552.114 as a "student record," insofar as the "student record" is protected by FERPA, without the necessity of requesting an attorney general decision as to that exception.² Nevertheless, you have submitted the documents at issue to this office for consideration, so we will address whether they contain information excepted from disclosure under sections 552.026 and 552.114 of the Government Code.

In this instance, KISD provides educational services to post-adjudicated juveniles in the Bell County Detention Center (the "center"). These juveniles are Texas Youth Commission residents who have been placed at the center by court order. Therefore, we agree the submitted documents consist of education records as defined by FERPA. *See* 20 U.S.C. § 1232g(a)(4)(A). The Commissioner's Court of Bell County has entered into a contractual agreement with Correctional Services Corporation, the requestor, for the provision of certain services at the center. You note that FERPA provides at 20 U.S.C. 1232g (b)(1)(E) that education records may be disclosed to "State and local officials or authorities to whom such information is specifically allowed to be reported or disclosed pursuant to State statute adopted -

(i) before November 19, 1974, if the allowed reporting or disclosure concerns the juvenile justice system and such system's ability to effectively serve the student whose records are released, or

(ii) after November 19, 1974, if -

² In this instance, KISD has requested an attorney general decision regarding the requested information and it has submitted documents to this office in redacted form for our review. Subsequent to Open Records Decision No. 634, the Department of Education issued a letter advising educational agencies and institutions that they may submit personally identifiable information subject to FERPA for the purposes of seeking an attorney general ruling as to the disclosure of information under FERPA or state law. *See* Letter from LeRoy S. Rooker, Director, Family Policy Compliance Office, United States Department of Education to David Anderson, Chief Counsel, Texas Education Agency (April 29, 1998) (on file with Open Records Division, Office of the Attorney General). Therefore, in the future, if KISD seeks an attorney general opinion under the Public Information Act regarding information subject to FERPA, it should submit such information without redactions.

(I) the allowed reporting or disclosure concerns the juvenile justice system and such system's ability to effectively serve, prior to adjudication, the student whose records are released; and

(II) the officials and authorities to whom such information is disclosed certify in writing to the educational agency or institution that the information will not be disclosed to any other party except as provided under State law without the prior written consent of the parent of the student.

20 U.S.C. 1232g (b)(1)(E). You state that the students whose records have been requested are post-adjudication residents, and as such, 20 U.S.C. 1232g(b)(1)(E)(ii) and Family Code section 58.0051 (interagency sharing of records) are inapplicable, and that no applicable state statute adopted before November 19, 1974 has been identified. Based on these representations, we conclude that 20 U.S.C. 1232g (b)(1)(E) does not provide the requestor with a right of access in this instance.

Here, the requestor is neither a parent nor legal guardian of the students named in the document. *See id.* § 1232g(a)(1)(A) (granting parents access to the education records of their children). Moreover, the requestors have not provided KISD with written authorization from a parent or legal guardian of the named students granting them access to the records in issue. *See id.* § 1232g(b)(1). FERPA requires an educational institution to withhold information from required public disclosure only to the extent "reasonable and necessary to avoid personally identifying a particular student or one or both of the student's parents." Open Records Decision Nos. 332 (1982), 206 (1978). Further, information that does not *directly* identify a student, but would make a student's identity easily traceable, must also be withheld. *See* Open Records Decision No. 224 (1979) (finding student's handwritten comments making identity of student easily traceable through handwriting, style of expression, or particular incidents related in comments protected under FERPA). As evidenced by the request for information, the requestor knows the identity of the students at issue. Therefore, we agree KISD must withhold the education records in their entirety to satisfy the requirements of FERPA.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the

governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

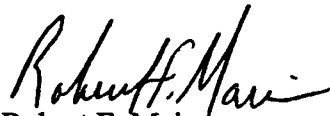
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Robert F. Maier
Assistant Attorney General
Open Records Division

RFM/seg

Ref: ID# 182082

Enc. Submitted documents

c: Ms. Connie M. West
Program Director
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(w/o enclosures)